IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 11701 of 2003

AND

WPMP.NO.1164 of 2005

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WRIT PETITION NO : 11701 of 2003

Between:

M.Leela, W/o.Satyanarayana Murthy, Head Nurse,
S.V.R.R.Government Hospital, Tirupathi, Chittoor Dist.

..... PETITIONER

AND

1. Smt.P.Sarojini, Head Nurse, S.V.R.R.Govt.Hospital, Tirupathi, Chittoor District.
2. The Director of Medical Education, A.P., Hyderabad.
3. The Regional Director Medical and Health Services, Cuddapah,

Cuddapah District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a writ, order or direction, more particularly one in the nature of Writ of Certiorari relating to the common order dt. 19-7-2002 in OA No.570/2001 and 7488/2001 passed by the AP Administrative Tribunal and as well as the consequential order in procs.Rc.No.778/B1/2001 dt.20.3.2003 issued by the 3rd respondent and after perusing the same set aside the said orders by declaring them as illegal and invalid and consequently declare that the petitioner is entitled for the seniority in the cadre of staff nurse w.e.f. the date of her initial appointment on 15-1-1978 in terms of the proc.Rc.No.133990/NB/78 dt.6.10.1980 issued by the 2nd respondent with all other consequential benefits, monetary and otherwise and pass such other order or orders.

WPMP.No.1164 of 2005

Between:

M.Leela, W/o.Satyanarayana Murthy, Head Nurse,
S.V.R.R.Government Hospital, Tirupathi, Chittoor Dist.

..... PETITIONER

AND

1. Smt.P.Sarojini, Head Nurse, S.V.R.R.Govt.Hospital, Tirupathi, Chittoor District.

2. The Director of Medical Education, A.P., Hyderabad.

3. The Regional Director Medical and Health Services, Cuddapah,

Cuddapah District.

RESPONDENTS

Petition filed under Section 151 CPC to grant interim stay of all further proceedings pursuant to the Notice Rc.No.773/B1/2001, dated 4.1.2005 issued by the 3rd respondent pending disposal of the Writ Petition.

Counsel for the Petitioner in W.P. and WPMP: MR.V.JAGAPATHI

Counsel for the Respondent No.1 in W.P. and W.P.M.P.: Mr.P.V.KRISHNAIAH

Counsel for the Respondent No.2 and 3 in W.P. and W.P.M.P.: GP FOR SERVICES-I

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.Nos.570 of 2001 and 7488 of 2002, dated 19.7.2002.

2. The matter relates to fixation of seniority and consequential promotion. The petitioner was originally appointed as a Staff Nurse and she joined the said post on 15.1.1978 at Kaikalur in Krishna District. While so, she along with others made an application for transfer to different places. Considering their request, 2nd respondent-the Director of Medical Education issued proceedings dated 6.10.1980 transferring them to various places. Accordingly the petitioner was transferred to the fold of Regional Director, Medical and Health Services, Cuddapah, which is in Zone-IV, for posting her in the existing vacancy at Government Maternity Hospital at Tirupati. Thereafter she joined the post in October, 1980. After joining the post, the services of the petitioner were regularized with effect from 15.7.1978. Since there was some typographical mistake, she made a representation for correction of date of recruitment as 15.1.1978 instead of 15.7.1978 and the said order was amended declaring the regularization date of the petitioner as 15.7.1978. Basing on the said seniority, she came to be promoted as Head Nurse with effect from 11.5.2000 in Zone-IV. The 1st respondent challenged the promotion of the petitioner in O.A.No.570 of 2001. She also challenged the inclusion of the name of the petitioner herein in the seniority list of Staff in O.A.No.7488 of 2001 and both the O.As., were

clubbed and disposed of jointly by a common order.

3. It is the contention of the petitioner that at the time when she was appointed the Presidential Order was not given effect to and therefore the provisions of the Presidential Order cannot be said to have the effect on her service. Further she was also not intimated as to the effect of the Presidential Order on her request transfer to Chittoor. The learned Tribunal after considering the respective contentions held that the petitioner is liable to take the last rank in the cadre of Staff Nurse in Zone-IV and consequently the promotion order issued by the authorities was set aside. The Tribunal also directed that the petitioner should be placed in the last rank among the staff nurses in zone-IV. Aggrieved by the said order, the present Writ Petition has been filed.

4. The learned counsel for the petitioner submits that at the time when the transfer order was made in October, 1980, there was no allotment of zones and therefore it is deemed to be an administrative transfer and therefore her seniority has to be protected from the date of her initial appointment viz., 15.1.1978. Alternatively also he submits that by virtue of joining the post in Zone-I, she cannot be allowed to become junior to number of persons, who are working in zone-IV as Staff Nurse and in similar circumstances number of staff nurses were transferred from one zone to another zone and their seniority was protected in another zone, except in the case of the petitioner by virtue of the present order. The further contention of the learned counsel for the petitioner is that had she has been intimated that she will be put in last rank in zone-IV, she would not have joined in the said zone and would be continued in zone-II without there being any disturbance to her promotional avenues. Thus, the learned counsel for the petitioner would submit that the order is wholly illegal and contrary to law.

5. The learned Government Pleader for Services-I appearing for respondents 2 and 3 submits that the order passed by the Tribunal is quite legal and valid. The Tribunal categorically found that it is in violation of Presidential Order and when the transfer is effected from one zone to another zone, the petitioner is bound to take the last rank in the transferred zone. Assistance is also taken from Rule 27 of Ministerial Service Rules, 1966, and according to the said Rule, if the seniority of a member of the service who is transferred at his own request from

one department or office to another shall be fixed in the latter department or office with reference to the date of his first appointment in the latter department or office. He, therefore, submits that the above Rule is applicable to the case of the petitioner and she has to take last rank in the seniority of the transferred zone.

6. We have also heard the learned counsel Mr.P.V.Krishnaiah appearing for 1st respondent.

7. The issue that arises for consideration is whether the petitioner belongs to zone-II or zone-IV and if so, the fixation of seniority has to be changed.

8. Though the learned counsel for the petitioner submits that the zonal allotment was not intimated to the petitioner at any point of time and though it was mentioned in the order dated 6.10.1980 that the petitioner was transferred to zone-IV, it was only a tentative allotment and it cannot be said to be a final allotment and therefore mere mention of zone-II in the order dated 6.10.1980 would not *ipso facto* go to establish that she belongs to zone-IV. This contention cannot be accepted. Even by implementing the Presidential Order, she has to be allotted to zone-II only and she cannot be allotted to zone-IV. Further we find that when such a mention was made in the order of transfer indicating that she belongs to zone-II and that she was transferred to other place in zone-IV, she never made any representation that her zone was wrongly indicated in the order of transfer. The Tribunal discussed with reference to Presidential Order, which we find it appropriate to extract, which reads as follows:

> "It is not under dispute that the applicant joined duty as Staff Nurse on 15.2.1978 in Zone-IV and the party respondent joined as Staff Nurse on 15.1.1978 in Zone-II. It is not also under dispute that Staff Nurse is a zonal post. It is also not disputed that the applicant is shown as senior to the party respondent in all the provisional seniority list that was communicated till 16.3.2000 including provisional seniority list issued by the 1st respondent on 16.2.2000. The date of first appointment of the party respondent no doubt was shown as 15.7.1978 all along. The date of first appointment is attempted to be rectified as 15.1.1978 instead of 15.7.1978 through the impugned order Rc.No.778/B1/2000, dated 22.4.2002. The said impugned order was issued, even according to the counter affidavit of the respondents, without giving notices

to all the affected parties including the applicant. They contend that there is no necessity to communicate the order to all the other candidates. They have communicated only to the two individuals in between whose name, the name of the party respondent, is inserted through the impugned orders as Sl.No.32(a), which itself is against the principles of natural justice. Another major issue that has to be examined in this OA whether the applicant who was transferred on her request from Zone-II to Zone-IV can be allowed to continue her seniority based on her initial date of appointment without taking last rank in the Zone-IV from the date she has joined in Zone-IV. The legality or otherwise of the transfer order of the applicant from Zone-II to Zone-IV by the Director of Medical and Health Services is not gone into now as that is not contested and also the party respondent is already there in Zone-IV, since the past 22 years. However, allowing the party respondent to take her seniority among Staff Nurses in Zone-IV from the date of her first appointment to Zone-II will be totally against the spirit of local cadre formations under six point formula. Under the organization of local cadre and direct recruitment orders, 1975, local cadres were organized in every department and any review or readjustment of local cadres was given a time of 18 months only after the formation of local cadres in each department or each cadre. The official respondents state in their counter that the Director of Medical and Health Services, pending review and ratification by the Government has transferred the party respondent to Zone-IV from Zone-II. They also state that no review has taken place. In such an event, the official respondents cannot say that the Director of Medical and Health Services was the appointing authority before local cadre formations and so he has rectified the mistaken posting of the party respondent to Zone-II instead of her native Zone-IV. As already stated earlier, the legality or illegality of the transfer of the applicant from Zone-II to Zone-IV is not being examined in this OA., as it is not a prayer but even if assuming the transfer order has to be sustained and in view of the fact that the party respondent has already serving in Zone-IV since last 22 years, conferring seniority to the party respondent from the date of initial appointment cannot be upheld, in view of the fact that any candidate seeking zonal transfer has to take last rank in the new zone to which she is transferred".

9. From a reading of the Presidential Order with reference to the present facts of the case, it is not in dispute that the petitioner belongs to Zone-II and she made a request for transfer to Zone-IV and that the same was accepted by the authority concerned. It is the not the case of the petitioner that she belongs to

Zone-IV itself and it is true that at the time when she was posted in 1980, implementation of the Presidential Order was pending adjustment, but by that it cannot be said that the petitioner belongs to Zone-II. Even according to the learned counsel for the petitioner she belongs to Zone-II being worked at Kaikalur in Krishna District. Under those circumstances, we do not find any ground to interfere with the findings recorded by the Tribunal.

10. There is yet another hurdle as the petitioner has not able to cross the same. Rule 16 of Ministerial Service Rules, 1966 stipulates the transfer of probationers and approved probationers, which reads thus:

> "**Transfers of Probationers and approved probationers**:- Notwithstanding anything contained in Rules 10 to 13 and 15, all the transfers of probationers and approved probationers either on administrative grounds or on request of the individuals from the unit of the office of the Head of the Department originally allotted, to another unit of the office of the Head of the Department or to the office notified as State Level Offices or Special Offices, to which the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, does not apply, may be made by the Head of the Department, concerned with the concurrence of the other Head of the Department, subject to the condition that their seniority shall be regulated in accordance with the provisions contained in Rule 27 of Andhra Pradesh Ministerial Service Rules".

When a member of service is transferred from one office to another at his own request is contained in sub-Rule 27(3) of Ministerial Service Rules, 1966, which reads thus—

> "(iii) The seniority of a member of the service who is transferred at his own request from one department or office to another shall be fixed in the latter department or office with reference to the date of his first appointment in the latter department or office".

Therefore, even under statutory condition also, she is bound to take the last rank when she was transferred from one office to another office. The mere fact that her probation was declared and she was regularized in service from 15.1.1978, it would not make her eligible to get the better seniority. May be for various reasons, her probation was declared with effect from 15.1.1978. Treating as she was only temporary employee when she was transferred from Zone-II to Zone-IV, it will not confer any better advantage on the petitioner than

what is prescribed under the rules.

11. The learned counsel for the petitioner would also submit that equity should work in this case as otherwise irreparable damage will be caused to the service interest of the petitioner as for the last more than 24 years she has been working in Zone-IV, and at this distance of time if she is deemed to be a junior to others, it will cause serious prejudice. Though we appreciate this contention, we are in a helpless state to assist the petitioner as the transfer was made from one zone to another shall be in conformity with the Presidential Order and the equity cannot be said to over ride the Presidential Order. Thus, viewed from any angle the petitioner is not entitled for any relief and we do not find any flaw in the order of the Tribunal.

12, In the result, the Writ Petition is dismissed. No costs.

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13. This application is filed seeking direction not to recover the amount already paid for the period the petitioner worked as Head Nurse.

14. It is true that the petitioner has worked in such capacity and discharged the duties as Head Nurse. In such a situation, recovering the amount from her, on reversion as Staff Nurse, for which she worked as Head Nurse is arbitrary and the Department is precluded from recovering such amounts. Therefore, it is made clear that no recoveries shall be effected from the petitioner with regard to the differential pay of Staff Nurse and Head Nurse for the period she worked as Head Nurse.

15. It is brought to our notice that the petitioner is working at Tirupati at present and the very purpose of her transfer to Tirupati is that her husband is working at Tirupati. Under those circumstances, the authorities are directed to consider the case of the petitioner and retain her at Tirupati until such time her spouse is working at Tirupati.

16. The petition is ordered accordingly.

G.BIKSHAPATHY, J.

1st February, 2005.

---------- P.S.NARAYANA, J.

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Director of Medical Education, A.P., Hyderabad.

2 The Regional Director Medical and Health Services, Cuddapah,

Cuddapah District.

3. The Registrar, A.P. Administrative Tribunal, Hyderabad.

4. 2 CD copies to G.P. for Services-I, High Court of A.P. Hyderabad.
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